

ORDER NO. 1480

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Robert G. Taub

Competitive Product Prices  
International Business Reply Service  
Competitive Contract 3 (MC2011-21)  
Negotiated Service Agreement

Docket No. CP2012-59

ORDER APPROVING NEW INTERNATIONAL BUSINESS REPLY SERVICE  
COMPETITIVE CONTRACT 3 AGREEMENT

(Issued September 27, 2012)

I. INTRODUCTION

The Postal Service seeks to include a new International Business Reply Service (IBRS) contract (Agreement) within the IBRS Competitive Contract 3 product.<sup>1</sup> For the reasons discussed below, the Commission approves the addition of the Agreement to the IBRS Competitive Contract 3 product.

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<sup>1</sup> Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, September 13, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5.

## II. BACKGROUND

IBRS Competitive Contracts provide businesses that sell lightweight articles to foreign consumers with an opportunity to offer consumers a way to return those articles to the United States for recycling, refurbishing, repairing, or other value-added processing. Notice at 4. The Commission approved the addition of IBRS Competitive Contract 3 in 2011 and designated the agreement filed in Docket Nos. MC2011-21 and CP2011-59 as the baseline agreement for purposes of establishing functional equivalence.<sup>2</sup> The instant Agreement is with a new IBRS customer. Notice at 3.

## III. POSTAL SERVICE POSITION

*Functional equivalence.* The Postal Service asserts that the instant Agreement is functionally equivalent to the baseline agreement because it shares similar cost and market characteristics with previous IBRS agreements. In support of this assertion, it states that Governors' Decision No. 08-24 established a pricing formula and classification which ensure that each IBRS agreement meets section 3633 criteria and related regulations, and asserts that the costs of each IBRS contract therefore conform to a common description. *Id.* The Postal Service also states that the IBRS language proposed for the MCS requires that each IBRS agreement must cover its attributable costs. *Id.* at 3-4. The Postal Service asserts that the instant Agreement meets the criteria in the Governors' decision and thus exhibits cost and market characteristics similar to previous IBRS agreements. *Id.* at 4.

The Postal Service asserts that the functional terms of the contract and benefits of the instant Agreement are the same. *Id.* It states that prices may differ depending on volume or postage commitments or when the agreement was signed, but claims these differences do not alter the functional equivalency of the instant Agreement with the baseline agreement. *Id.* In addition, the Postal Service identifies what it characterizes

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<sup>2</sup> See Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011.

as minor differences between the instant Agreement and the baseline agreement. These include a revision to Article 15 adding a phrase addressing the possibility that Agreement-related information may be filed in other Commission dockets and the inclusion of a new Article (Article 30 on Intellectual Property, Co-Branding, and Licensing). *Id.* at 5. The Postal Service asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement. *Id.* It therefore claims that nothing detracts from the conclusion that the instant Agreement is functionally equivalent to the baseline agreement. *Id.*

#### IV. COMMENTS

The Public Representative filed comments supporting the addition of the instant Agreement to the IBRS Competitive Contract 3 grouping.<sup>3</sup> No other comments were received.

The Public Representative states that his review of the Agreement and the supporting financial model filed under seal leads him to conclude that the Agreement is functionally equivalent to the baseline agreement and should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. PR Comments at 2. The Public Representative agrees with the Postal Service that the two differences between the instant Agreement and the baseline agreement (revised Article 15 and a new Article 30) are minor and do not affect the fundamental service being offered or the fundamental structure of the Agreement. *Id.* at 3. The Public Representative further states that the prices in the instant Agreement should generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a). *Id.*

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<sup>3</sup> Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, September 21, 2012 (PR Comments).

## V. COMMISSION ANALYSIS

*Scope and nature of review.* The Commission's responsibilities in this case are to determine whether the instant Agreement (1) is functionally equivalent to the IBRS 3 baseline contract; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 CFR 3015.5 and 3015.7).

*Functional equivalence.* The Commission concludes that the instant Agreement shares similar cost and market characteristics with the baseline agreement. It also concludes that the instant Agreement conforms to the pricing formula and classification established in Governors' Decision No. 08-24 and is consistent with 39 U.S.C. § 3633 and Commission rules. The Commission has considered the nature and impact of the two differences between the instant Agreement and the baseline agreement (revised Article 15 and new Article 30). It agrees that these differences are minor and do not affect the fundamental service being offered or the fundamental structure of the contract. The Commission therefore concludes that the instant Agreement is functionally equivalent to the baseline and may be included within the IBRS Competitive Contract 3 product.

*Section 3633 considerations.* The Commission reviews competitive products to ensure that they meet the requirements of 39 U.S.C. § 3633 and 39 CFR 3015.5 and 3015.7. The Commission has reviewed the financial analyses provided under seal and the PR Comments addressing the consistency of the instant Agreement with applicable requirements. Based on the information provided, the Commission finds that the instant Agreement should cover its attributable costs, satisfying 39 U.S.C. § 3633(a)(2); should not lead to the subsidization of competitive products by market dominant products, satisfying 39 U.S.C. § 3633(a)(1); and should have a positive effect on competitive products' contribution to institutional costs, satisfying 39 U.S.C. § 3633(a)(3).

*Other considerations.* The Agreement provides that the Postal Service will notify the customer regarding the effective date within 30 days after receiving regulatory approvals. Notice, Attachment 1 at 4. Expiration is one calendar year after the effective date, unless terminated sooner. *Id.* The Postal Service shall promptly notify the

Commission of the effective date of the Agreement. In addition, it shall promptly notify the Commission if the Agreement terminates earlier than scheduled.

The instant Agreement, like previous IBRS Competitive Contracts, includes a contingency clause in Article 8 which allows the Postal Service to change rates without entering into a new agreement based on cost increases. Article 27 addresses price contingencies under early termination and other circumstances. The Commission reviewed these types of clauses in Docket No. CP2009-20 and concluded that if rates change under the terms of these contingencies, the Postal Service must file the changed rates under 39 CFR 3015.5 and provide at least 15 days' notice, but stated that it did not anticipate the need for further action unless the changed rates raised new issues.<sup>4</sup> The Commission further determined that its conclusions with respect to the agreement in Docket No. CP2009-20 would apply to other agreements with similar provisions permitting contingency prices. *Id.* at 11. As the instant Agreement includes similar contingencies, the Postal Service shall file rate changes occurring as the result of a contractual contingency with the Commission and provide at least 15 days' advance notice of the change in rates.

*Conclusion.* The Commission concludes that the instant Agreement is appropriately added to the existing IBRS Competitive Contract 3 product.

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<sup>4</sup> See Docket Nos. MC2009-14 and CP2009-20, Order No. 178, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, at 9-11, February 5, 2009.

V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Agreement filed in Docket No. CP2012-59 is included within the International Business Reply Service Competitive Contract 3 product.
2. The Postal Service shall notify the Commission of the effective date of the instant Agreement.
3. The Postal Service shall notify the Commission if the instant Agreement terminates earlier than scheduled.
4. The Postal Service shall file any modifications of prices in the instant Agreement with the Commission in conformance with the terms set out in the body of this Order.

By the Commission.

Shoshana M. Grove  
Secretary